

AMTA

American Mobile Telecommunications Association

EX PARTE OR LATE FILED

PRESIDENT & CEO

Alan R. Shark, CAE

GENERAL COUNSEL

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez

March 23, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Ex parte* filing
900 MHz SMR Licensing
GN Docket No. 93-252
PR Docket No. 89-553

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On March 23, 1995, the American Mobile Telecommunications Association, Inc. (AMTA) delivered copies of an *ex parte* filing in the above-captioned docket to the following FCC staff members: Rosalind K. Allen, Chief, Commercial Division of the Wireless Telecommunications Bureau; David Furth, Deputy Chief; and Amy Zoslov, Esq., also of the Commercial Division. In accordance with the Commission's Rules, two copies of this filing are attached hereto.

If there are any questions in this matter, please contact the undersigned.



Jill M. Lyon
Director of Regulatory Relations

Attachment

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Via Hand Delivery

Ms. Rosalind K. Allen, Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, DC 20554

Re: ***Ex Parte* Filing**
900 MHz SMR Licensing
PR Docket No. 89-553
GN Docket No. 93-252

Dear Ms. Allen:

The American Mobile Telecommunications Association, Inc. ("AMTA", the "Association") hereby respectfully submits a proposal for treatment of designated entities in competitive bidding rules included in the above-referenced proceeding. AMTA respectfully requests that competitive bidding preferences for designated entities in this proceeding be limited to small businesses, that small business be defined for the purpose of this proceeding as described herein, and that preferences be limited to unencumbered channel blocks within each Major Trading Area ("MTA").

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. AMTA's members include many present and potential 900 MHz SMR licensees.

The Commission decided to use competitive bidding procedures for future 900 MHz SMR licensing in its *Third Report and Order* in the CMRS proceeding.¹ However, details of auction rules were left to an anticipated decision specifically

¹ *Third Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, FCC 94-212 (adopted August 9, 1994 and released September 23, 1994), at ¶ 337.

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focusing on the 900 MHz service, without a further notice and comment period.² Therefore, AMTA has not previously communicated a position on this issue to the Commission.³

Auction Preferences

AMTA supports the Commission's often-stated goal of encouraging diverse competition in the mobile wireless arena. The Association notes that, due to the presence of a number of existing licensees in this band, the amount of "clear" spectrum to be included in auctions is limited. That coupled with the small size of prospective channel block grants would seem to indicate that small businesses have a greater chance for success in 900 MHz SMR license auctions than in other wireless auctions either already held or scheduled. AMTA believes, therefore, that there will be extensive small business interest in these auctions. Any bidding preferences for small businesses thus must be crafted carefully to avoid being over-inclusive, and therefore, of limited worth in actually assisting small businesses to win auctions.

AMTA respectfully submits that a preference for small businesses, in the form a bidding credit, would be appropriate in upcoming 900 MHz SMR auctions. Due to the large number of small businesses likely to be attracted to this band, however, "small business" must be narrowly defined. To arrive at an appropriate definition of a small business in the SMR industry, the Commission need look no further than the 800 MHz band, which now includes hundreds of businesses far smaller than any small business definition that the FCC has heretofore adopted.

"Small Business" Definition

A fully-loaded ten-channel SMR system at 800 MHz had average gross dispatch revenues of approximately \$125,000 in 1994. Fully interconnected service

² Id. at ¶ 182.

³ This proposal has been formulated based on the unique circumstances of the 900 MHz SMR band. AMTA emphasizes that its position herein does not constitute its position on designated entity preferences in any other proceeding.

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generated gross revenues of approximately \$445,000.⁴ The vast majority of AMTA's operating members have fewer than 2,000 total customers, and for these small businesses, the SMR system is the business. The major asset for each, therefore, is the SMR license itself.

Verifiable, balance-sheet assets for average SMR businesses vary widely based on size of sales and service operations, geographic area, ownership of tower sites and other factors.⁵ A leading broker of SMR systems estimates that an average ten-channel system would show balance-sheet assets of approximately \$ 300,000. Total average gross revenues and assets for the large majority of the SMR industry, therefore, would be no more than \$ 1 million. The Association suggests that, to fairly characterize "small business" in this proceeding, this data would support credits to those entities with average gross revenues and assets over the last three years not exceeding \$ 1 million; in the interest of providing credits to a variety of small businesses, AMTA would support a benchmark of up to \$3 million.

A survey of the largest existing 900 MHz operators shows that gross revenues from 900 MHz SMR operations are currently low, since all systems are still being implemented and some do not currently have commercial customers. Comprehensive economic data concerning revenues and assets for the 900 MHz portions of these operators' businesses is not readily available. AMTA suggests that the above-recommended figure is appropriate in an industry in which truly small businesses are serving hundreds of thousands of customers and hope to continue to do so. Regardless of whether such businesses include minority or women owners, AMTA submits that this definition, and a bidding preference based upon it, will serve to encourage a wide variety of bidders to participate in the process, without being so over-inclusive as to render the credit meaningless.

⁴ This figure is based upon 70 mobiles per channel, with average revenues of \$14.70 per month per mobile for unlimited dispatch service and \$52.90 per month per mobile for full interconnect service. See "The State of SMR & Digital Mobile Radio, 1994-1995," AMTA/EMCI, released January, 1995. To AMTA's knowledge, no such revenue data is available for the 900 MHz SMR industry.

⁵ The fair-market value of 800 MHz SMR channels has increased in recent years due to high demand and substantial consolidation. Such consolidation has not occurred in the 900 MHz SMR band.

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Eligible Channel Blocks

Unlike spectrum so far auctioned, the 900 MHz SMR band includes active existing licensees for which there are no provisions for relocation. These licensees have been constructing extensive systems since the original 900 MHz proceeding several years ago in spite of regulatory restrictions, and have thousands of current customers. AMTA recognizes that these licensees will have to succeed at competitive bidding in order to further expand their systems. However, the Association is concerned that existing licensees, which may not win auctions including their licensed channels, not be held hostage to speculators or other entities with no real intent of constructing viable systems. Such a "greenmail" scenario is more likely if congested spectrum is included among those blocks eligible for bidding credits. Therefore, AMTA urges the FCC to limit small business bidding credits to currently-unlicensed channel blocks in each MTA.

Should the Commission decide that a uniform number of channel blocks must be eligible for bidding credits in each MTA, the Association recommends an alternative proposal: that the three least-encumbered blocks in each MTA be open to bidders qualifying for credits. Those blocks vary widely from market to market; therefore, AMTA urges the Commission not to designate the same blocks in each MTA. Instead, a reference to the Commission's database should easily determine which blocks in any given MTA are currently unencumbered, or, where no unencumbered spectrum exists, are least encumbered (i.e., have the fewest number of licensed sites). AMTA recommends that the percentage of bidding credit be in line with small business credits adopted for auctions in comparable spectrum bands.⁶

Conclusion

For the reasons outlined above, AMTA urges the Commission to adopt a small business preference, in the form of a bidding credit, in its anticipated 900 MHz SMR decision. AMTA further recommends that the credit be limited to those bidders that can demonstrate an average combined gross revenue and asset value of no more than \$ 3 million over the last three years. Finally, the Association urges that bidding

⁶ Cf., *Fifth Memorandum Opinion and Order*, Implementation of Section 309(j) of the Communications Act, PP Docket No. 93-253, FCC 94-285 (released November 23, 1994), at ¶ 99.

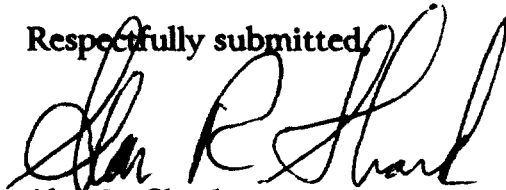
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credits be available only on unencumbered channel blocks. In the alternative, the Commission should designate for small business preference eligibility the three ten-channel blocks with the least amount of currently-licensed spectrum in each MTA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan R. Shark". The signature is fluid and cursive, with the first name "Alan" being more legible than the last name "Shark".

Alan R. Shark
President & CEO

cc: Mr. David Furth
Ms. Amy Zoslov